

ne of the primary goals of the counterinsurgent is to reestablish security and rule of law. An effective arrest and internment system is an essential part of a successful counterinsurgency effort, providing a nonlethal means of separating insurgents from the general populace and thereby securing the populace. The capture of insurgents and their equipment provides valuable intelligence to counterinsurgents and allows the option of rehabilitating insurgents and later releasing them back into society. Mistakes made by counterinsurgents in arresting or holding detainees may reinforce insurgent propaganda and otherwise undermine the overall counterinsurgency effort. Simply stated, a well-run system for arresting insurgents will greatly aid a counterinsurgency effort while a poorly run system will retard it.

Policies governing the arrest and internment of insurgents should contribute to ending the insurgency while minimizing or eliminating the potential for political damage to the authorities involved. They should be developed and enacted with an eye toward the responses of local nationals, international observers, and the U.S. populace. Achieving a balance between the need to provide security and the need to maintain legitimacy is difficult. When confronted

with difficult security situations, authorities will often feel a strong impetus to use illiberal arrest and internment techniques or to ignore political or cultural expectations. Security forces and governments often make mistakes in the use of arrests and internment. Historically, there are five common errors: arresting innocent individuals, releasing insurgents who are still a danger to the counterinsurgency effort, mistreating arrested individuals, failing to anticipate the effects of arrests and internment on the information campaign, and allowing prisons to serve as training areas for insurgents.

Arresting Innocents

Arresting innocent personnel makes the actions of counterinsurgents appear arbitrary, unjust, or repressive. It aids insurgent propaganda by providing a real error to exploit and ularly the individuals wrongly detained, their families, friends, and neighbors. Individuals recruitment into the insurgency, and unwarranted arrest may compel otherwise ambivalent individuals to volunteer. A common tactic of insurgents is to encourage the arrest of innocent individuals to increase support

can alienate segments of the populace, particalienated by wrongful arrest are susceptible to

for their cause.2

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Arrests of innocent personnel may occur for a number of reasons, including:

- inaccurate or poorly developed intelligence
- inability of troops to communicate effectively with locals
- innocent personnel arrested as witnesses or for questioning
- arbitrary arrests or "fishing expeditions" used to try to identify insurgents
 - collective punishment of a community.

Authorities may also combine aspects of these errors. In Aden in the 1960s, for instance, British forces lacked intelligence on insurgents, so they relied on mass arrests and interrogation as a means of developing intelligence. The policies led to international condemnation of British tactics and greatly reduced public support within Britain for the counterinsurgency effort, contributing to the failure of British initiatives in Aden.3

There are many examples of arrests and internment of innocents leading to the creation of more insurgents than the arrests neutralize. In Northern Ireland in the 1970s, British and Ulster security forces used inaccurate intelligence to conduct mass arrests. Innocents were held in jails with members of the Provisional Irish Republican Army, who used their internment to recruit new members.4 Likewise, mass arrests of civilians under the Phoenix Program in Vietnam

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allowed the Viet Cong to recruit members from jails and holding areas.⁵

Releasing Insurgents

Amnesties and prisoner releases are often part of the political bartering that ends an insurgency. However, the release of insurgents who still pose a threat can make the task of the counterinsurgent more difficult. Captured insurgents pose a threat if they are still dedicated to the insurgency, especially if it is ongoing and the released insurgents can rejoin. There are several reasons release of dangerous insurgents may occur:

- clerical errors
- mistaken identity
- escape
- lack of evidence or intelligence to warrant further internment
- underestimating or not assessing the effects of releasing insurgents
 - public pressure on counterinsurgents.

Released insurgents may be difficult to recapture because they have learned from their mistakes and have a thorough understanding of the process of arrest, prosecution, and internment. Freed insurgents may become more dangerous and better connected due to interactions with other detainees. In addition, they may gain status among other insurgents for having been arrested.

In most cases, counterinsurgents will be worse off when insurgents are released at inappropriate times and for inappropriate reasons. There are circumstances where counterinsurgents may arrest an insurgent knowing they can only keep him in custody a short time, for instance, to disrupt an impending insurgent operation. The use of such tactics should be limited because the negative effects of such temporary arrests, including an increase in the

authorities and allows insurgents to argue that they are innocent and unfairly targeted.

There are additional second- and thirdorder effects from the improper release of insurgents. If internees are regularly or arbitrarily released, those still in prison may be less willing to provide information. The insurgent learns that simply by waiting out his sentence, he can avoid having to negotiate or trade information to procure his release.

More importantly, release of insurgents makes intelligence collection more difficult within the populace. People may be less willing to risk their lives to provide information on suspects if insurgents will return from prison. The people may also come to see the counterinsurgents as incompetent and unable to protect them if insurgents routinely regain their freedom. This contributes to the rise and spread of rumors of corruption within the counterinsurgent legal system, such as the efficacy of bribes or power of insurgent leaders over the system. Finally, release of insurgents may be harmful to the morale of counterinsurgents, who must capture the same insurgents multiple times, or who suffer repeated attacks from released insurgents.

Mistreating Detainees

Mistreatment of arrested individuals generally means not treating them in accordance with established rules of engagement, laws, or operating procedures. It can be expanded to mean not treating internees consistently with local culture or international norms. Mistreatment may occur while individuals are taken into custody, while they are in a holding facility, or at the time of their release.

Arrest and internment have additional importance in counterinsurgency because of the proximity of insurgents to counterinsurgents. For many insurgents, incarceration will be the first up-close and personal encounter with counterinsurgents and the first time the

macy of counterinsurgents both among the local populace and in the international arena.⁷ There are numerous historical examples of prisoner mistreatment hindering the efforts of counterinsurgents.⁸

The use of torture by the French in Algeria affected thousands of people and benefited insurgent recruiting. The institutionalization of torture and other illiberal practices also reduced the support of the French people for counterinsurgency efforts in Algeria and may have contributed to the attempted coup by French officers against their government in 1958.9

The second- and third-order effects of mistreatment of arrested individuals are not always predictable. The execution of Irish insurgents in 1916, particularly the wheelchair-bound James Connolly, helped spark the 1919–1921 Irish War of Independence against British rule. ¹⁰ London was surprised by the uprising as the insurgency had little public support prior to the executions.

A further compounding factor is that the understanding of what comprises mistreatment changes over time and is dependent on cultural attitudes and perceptions. For instance, in the late 19th century, the suspension of civil rights and use of summary execution were acceptable tools for U.S. forces serving in the Philippines, while neither is generally allowable today.

Failing to Anticipate Effects

By its nature, "internment is such an illiberal method that it will always give rise to widespread international criticism and allegations of brutality, many of which will be believed."12 A wide variety of actors will scrutinize the way arrests occur, the treatment of prisoners, interrogation of prisoners, and release of prisoners. Negative perceptions of these activities will aid insurgent recruiting efforts, undermine support to the government, or diminish support to counterinsurgents in their home countries. Insurgents invariably claim mistreatment of detainees and detention of innocents. For instance, captured al Qaeda training manuals emphasize the importance of claiming abuse.13 The news media may report these claims. Actual mistreatment of detainees adds fuel to insurgent propaganda and will often be covered by the media as well. Counterinsurgents must anticipate these eventualities and have in place responses and systems for mitigating the effects. The modern information environment compounds the difficulty for counterinsurgents as news can travel almost anywhere in seconds. The counterinsurgency effort will simultaneously be scrutinized by

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"street credibility" of detained insurgents and in the perception that the security forces are unable to keep insurgents imprisoned. The most strident civilian parallel to this dilemma is the arrest of organized crime leaders. Authorities spend years building a case and allow the criminal organization to commit lesser infractions that will only merit temporary incarceration in order to ensure the legitimate, long-term removal of the leader. Acting too early "tips the hand" of counterinsurgents are seen without armor or in a tactical situation. In a properly operating internment system, it may be the first time prisoners encounter objectivity, fairness, and equality of the rule of law. The first order effect of detainee mistreatment may therefore be to steel the resolve of insurgents or convince innocent detainees that they should join the insurgency. The major second- and third-order effects are to undermine the support and legiti-

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insurgents, local nationals, populations of states providing security forces, nongovernmental organizations, foreign governments, and the media.

The history of counterinsurgency is replete with examples of counterinsurgents failing to take into account the effects of their arrest and internment practices. For instance, while conducting counterinsurgency operations in Yemen in the 1960s, the British army developed a reputation for arbitrary detention of civilians and torture of prisoners. Although inquiries by the International Red Cross and Amnesty International found no evidence of physical abuse of prisoners, the rumors persisted and undermined popular support to continued British involvement. Declining support at home contributed to the success of the Yemeni insurgency against British rule.¹⁴

The conduct of indigenous security forces working with foreign counterinsurgents may also reflect on the entire force. As an example, British forces in Cyprus in the 1950s tolerated the torture of prisoners by Cypriot police. Insurgents were able to capitalize on this, causing political damage to the British government and bringing international scrutiny on Britain.¹⁵

Modern media are so pervasive it should be expected that every action of the counterinsurgent and his allies will be reported. The allegations of insurgents against counterinsurgents, true or not, will often have an international audience. Arrests and internment performed by counterinsurgents must be a part of the information campaign. Otherwise, intense media coverage and the spread of rumors will aid the insurgents and may cause the counterinsurgency effort to fail.

Allowing Prisons to Be Insurgent Bases

Captured insurgents will communicate with one another while detained. They will find ways to talk directly, pass notes, or otherwise send signals. Their communication can extend beyond a detention facility to the outside world. Insurgents may use communication to organize their efforts. Activities that may occur in prisons include:

- creating relationships with insurgents from other regions and backgrounds
- sharing information on successful tactics and techniques
- ideological or theological indoctrination of other detainees
- recruitment of noninsurgent detainees into an insurgent organization

- **■** training
- intimidation of prisoners or guards
- organizing escapes, riots, hunger strikes, attacks on guards, or other disobedience
- passing guidance from captured leaders to free insurgents and vice versa.

In Northern Ireland, for example, prisons became the "training centres" of the Provisional Irish Republican Army in the 1960s and 1970s. The holding of insurgents and innocent civilians in common areas facilitated this. ¹⁶ In Algeria in the 1950s and 1960s, a similar situation prevailed in prison camps where hardcore insurgents were not separated from other prisoners. ¹⁷

The greater the restrictions on insurgent interaction, the less insurgents will be able to trade information and organize. However, the counterinsurgent must keep in mind that some level of interaction or information-sharing will occur. It is a matter of controlling the interaction.

There are many means of controlling detainees and their ability to communicate. However, detention facilities cannot become enemy bases of operation if counterinsurgents avoid capturing innocents and releasing insur-

the greater the restrictions on insurgent interaction, the less insurgents will be able to trade information and organize

gents who are still a threat. Fewer innocent detainees mean fewer potential recruits in the detainee population. Additionally, training and sharing of tactics will have no effect on the insurgency if captured insurgents stay in prison.

Contemporary Operations

The United States currently supports multiple counterinsurgency efforts, including those in Colombia, the Philippines, Iraq, and Afghanistan. In addition to these conflicts, Washington is embroiled in the war on terror, which is often considered a global counterinsurgency. Arrests and internment have been important tactics used by U.S. forces in Iraq and Afghanistan and in the greater war on terror.

Since the terror attacks of September 11, 2001, the United States has routinely made all of the mistakes described above. The effects vary by event and circumstance, but U.S. arrest and internment practices have engendered negative sentiments toward the United States in many

regions of the world, particularly where counterinsurgency efforts are ongoing.

One focal point of national and international scrutiny has been the internment center at Guantanamo Bay. The basis for this scrutiny has predominately been reported mistreatment of prisoners. Human rights activists have opposed the center since its inception because U.S. policy was to hold prisoners without charges indefinitely. Holding prisoners without due process contradicts both U.S. and international laws and norms. Supreme Court rulings in 2004 and 2006 reinforced this. Though a slight majority of Americans support the continued use of the Guantanamo Bay facility and believe that prisoners are treated appropriately, views in many foreign nations on which the United States relies for assistance in the war on terror are opposed to the practices in Guantanamo and routinely call for the end of internment there.18

Guantanamo is a stark example of the necessity for anticipating the effects of internment on the information campaign. Reported practices such as denying prisoners due process were bound to cause an uproar within the United States and abroad, particularly given that the internees are foreign nationals. The plan for holding captured terrorists should have accounted for this and been executed in a manner that supported other aspects of the U.S. information campaign, such as the importance of democracy and rule of law as tools against terrorism.

Mistreatment has been an issue in both Afghanistan and Iraq. Numerous incidents of



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prisoner abuse and murder have been publicized by the international press. The most notorious was the Abu Ghraib prison scandal in 2004. The mistreatment of prisoners at Abu Ghraib greatly affected international support for the war in Iraq, impacted the sentiment of the American public toward the war, and increased support for the insurgency in Iraq. The scandal is regularly used

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in the propaganda of both Iraqi insurgents and international terrorist organizations and may be used in conjunction with allegations of abuse at Guantanamo to create the impression that the United States maintains a policy of abuse and torture targeting Arabs and Muslims.¹⁹

Though it has begun to improve, the system of arrests and internment in Iraq was poorly conceived and orchestrated. It began as an outgrowth of the system for processing prisoners of war. Without the necessary planning and training to effectively run a system for arresting and interning insurgents, U.S. forces in Iraq made every possible mistake. The overall effect is a system that has turned some neutral or progovernment Iraqis toward supporting the insurgency and is largely ineffective as a means for protecting the populace from insurgents.

Mistreatment has arisen as a problem in all aspects of the system. The way arrests were conducted, particularly early in the counterinsurgency, was not in accordance with local culture and norms, creating resentment toward American forces. Detainee abuse, such as the Abu Ghraib scandal and other incidents, further fueled negative attitudes.²⁰ In the words of President George W. Bush, the Abu Ghraib scandal in particular "eased us off the moral high ground."²¹

U.S. and Iraqi forces have also captured large numbers of innocent individuals and regularly release dangerous insurgents. Over the course of Operation *Iraqi Freedom*, American forces have arrested at least 70,000 in Iraq, 18,000 of whom are still in custody.²² From June 2005 to June 2006, more than 16,000 prisoners were processed at theater internment facilities, but 11,000 were released.²³ Anecdotal evidence indicates that many of these detainees were innocent and ended up in prison due to inaccurate intelligence or indiscriminate arrests.²⁴

There are also indications that innocent detainees are recruited from the prisons, insurgents use the prisons to share information and network, and arrest is not a deterrent because insurgents believe they will soon be released.²⁵ Iraqi leaders have described Iraqi prisons as schools for al Qaeda, and a representative of the Iraqi Islamic Party noted that "detainees will come out in the form of car bombs and suicide bombs."²⁶

There are recent reports of widespread corruption and abuse in the conduct of the internment system in Iraq.27 Iraqi judges regularly release insurgents, citing lack of evidence or orders from high-ranking officials. Likewise, the Iraqi government and U.S. military authorities have conducted multiple mass releases in an attempt to garner popular support from the families of detained individuals. Predictably, the release of dangerous insurgents has stoked the insurgency and caused problems for American military personnel and Iraqis. U.S. military personnel report that it is increasingly difficult to get intelligence from captured insurgents as they know they will be released within 6 months of capture. U.S. military personnel have repeatedly found themselves fighting the same insurgents again and again in a climate of rising violence and growing support for the insurgency and sectarian militias.28

Toward More Effective Policies and Procedures

Given the importance of arrests and internment in counterinsurgency efforts and the potential damage from missteps in these activities, measures must be taken to ensure that they are carried out appropriately.

Plan the Effort. When becoming involved in a counterinsurgency or counterterrorism

effort, the government must make prisoner handling part of the overall plan. Estimates of how many prisoners will be taken and what resources will be required should be developed in the planning stage. An operational plan for conducting arrests, prisoner processing, and internment should follow. Planning helps prevent ad hoc detainee operations that are damaging to the overall campaign.

Resource the Effort. An effective system of arrest and internment requires resources including personnel, training, facilities, and equipment. Major requirements often include:

- subject matter experts to train and advise the force
- internment facilities that are adequately sized, cannot easily be used for recruitment/ training centers, and meet legal requirements
- legal staff to provide oversight and operate the system
- adequate number of trained interrogators for all organizations handling prisoners
- adequate number of interpreters for all organizations handling prisoners
- adequate number of trained guards for internment facilities
 - means for transporting prisoners
- automation for tracking detainees, their belongings, and associated evidence, intelligence, and debriefings.

The importance of having experts available to run internment facilities and conduct interrogation cannot be overstated. In Algeria in the 1950s, it was noted that putting responsibility for internment and interrogation in the hands of tactical commanders led to hugely mixed results. In some areas, torture became standard operating procedure. In others, units



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were simply incompetent in their interrogation techniques. The situation improved dramatically after the creation of a professional internment and interrogation service.²⁹

Train. Training is a crucial part of resourcing the effort; arrests and internment cannot be left to amateurs. At the beginning of U.S. operations in both Iraq and Afghanistan, it was largely untrained amateurs, in this case American military personnel, who conducted arrests and operated holding facilities. Though well intentioned, these troops did not have the training to appropriately accomplish tasks. The subsequent establishment of predeployment training on counterinsurgency operations has done a great deal to overcome this. In the future, it would be beneficial for troops to receive training prior to entry into a counterinsurgency campaign so mistakes are not made in the crucial early stages.

Target. Targeting involves the collection of intelligence to support operations and the use of intelligence to shape the operating environment. It plays two important roles with detainees. First, it provides a means for deciding who to detain. Effective intelligence collection from multiple sources, thorough intelligence analysis, and integration of government agencies in the targeting process ensure the detention of insurgents and not civilians.

The second use of targeting is for release of insurgents. Just as internees should not be detained without consideration of the effects, they should not be released without similar consideration, which includes:

- potential for the detainee to resume insurgent operations
 - effects on insurgent organizations
 - reactions of the public
 - reactions of counterinsurgents .

These considerations are most important for mass releases of detainees. If the detainee system operates effectively, there should never be a time when mass releases of innocent detainees occur, because mass numbers of innocents will not be in detention facilities. However, mass releases may be part of negotiation or trust-building between insurgent groups and the government at the end of hostilities. Under those circumstances, care must be taken to ensure that the release has the desired effects and does not simply reinvigorate the insurgency.

Use Appropriate Arrest and Internment Techniques and Procedures. There are multiple

components to this part of detainee operations, including:

- ensuring that individuals are arrested in the right way
- ensuring that prisoners are taken only when intelligence or circumstances support it
- ensuring that internment facilities operate in accordance with all applicable laws, doctrine, and operating procedures
- ensuring independent oversight of internment facilities.

The way prisoners are captured can greatly affect public perception of counterinsurgents. Because of the potential for negative effects on public opinion, David Galula went so far as to suggest that arrests should be made by a police force that is completely separate from the force endeavoring to win the support of the populace.30 Regardless of who conducts arrests, counterinsurgents should use techniques appropriate to the operating environment. For instance, some cultures require taking revenge on anyone publicly insulting one's family. Therefore, harsh techniques for detaining insurgents can create more insurgents. In addition, public support may be lost if counterinsurgents appear overly harsh in taking detainees. For targeted insurgents, counterinsurgents should use techniques consistent with available intelligence on the insurgents, local culture, and threat level during an operation. For prisoners taken as targets of opportunity, techniques should follow escalation of force procedures as described in the theater's rules of engagement. If damage occurs to people or their property, counterinsurgent forces should consider compensating the injured people, their families, or the property owners.

Counterinsurgents may detain individuals for reasons other than direct involvement in insurgent activities. For instance, a patrol may not have a translator and need to take individuals back to base camp to speak with them. Another example is taking individuals for questioning after an insurgent attack or because they may have information on the insurgency. Taking detainees for reasons other than their involvement in insurgent activities should be avoided. If innocents must be taken in for questioning, they should be kept separate from the general detainee population so they cannot communicate with insurgents or be identified by them. In addition, individuals taken for questioning should be released as soon as possible and in a manner that does not alienate them or their families.

Operating facilities in accordance with applicable laws and doctrine ensures that holding facilities serve their purpose without fueling insurgent propaganda. This means not only maintaining humane treatment of detainees but also ensuring accountability about the detainees and their property.

Humane treatment safeguards the detainees, protects the personnel running the detention facility from false accusations, and supports the mission by maintaining the legitimacy and support of counterinsurgent actions. Insurgents will often claim brutal treatment of prisoners as a part of the propaganda. Such claims may cause holding facility personnel to come under scrutiny regardless of whether they did or did not commit abuse. Consistently operating within the law, investigating cases of abuse, and regularly monitoring and recording the physical health of prisoners will safeguard holding facility personnel.

Maintaining accountability for prisoners and their property helps ensure that neither

public support may be lost if counterinsurgents appear overly harsh in taking detainees

intelligence nor evidence against detainees is lost and that detainees themselves are not accidentally released.

Techniques and procedures for ensuring that detention facilities operate effectively include:

- training all holding facility personnel on applicable laws and doctrine
- administering regular medical checkups of prisoners
 - inspecting holding facilities regularly
- using biometrics to identify and track detainees
 - standardizing spellings of prisoner names
 - synchronizing prisoner tracking databases
- synchronizing prisoner database with intelligence databases.

Depending on the legal and operating conditions of the theater, requiring review by officers from both intelligence and the Judge Advocate for either release or further incarceration of a detainee may also be beneficial.

Even if holding facilities are run perfectly, outside oversight by nongovernmental organizations may be beneficial. Organizations such as

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the International Red Cross provide independent oversight that is respected worldwide. Their approval of holding facilities and operations may provide legitimacy to counterinsurgents and demonstrate that they are not cruel in their treatment of prisoners.

Coordinate with Local Authorities. When possible, the United States should work through local police and other authorities to arrest and intern insurgents.³¹ Coordinating with local authorities, particularly police, can have a number of beneficial effects. The locals may be able to provide intelligence and aid in the targeting effort. They have cultural insights that help establish effective arrest and internment procedures. They are often able to conduct arrests themselves in ways that will not cause negative perceptions of the United States.

Gather Evidence and Witness Statements. Counterinsurgents may be legally required to produce evidence linking arrested personnel to insurgent activities. Even in cases where evidence is not required for prosecution, physical verification of insurgent activity often has high intelligence value. Gathering evidence and maintaining it with a detainee is difficult, particularly in large-scale operations with many detainees from different locations. Training for Soldiers on witness statements and maintaining evidence with a detainee is helpful in overcoming this. Legal support by personnel from the Judge Advocate, Military Police, Office of Special Investigations, Naval Criminal Investigative Service, or Criminal Investigation Command is also beneficial.

After movement of prisoners to theater or national-level holding facilities, it is important that the capturing unit maintain contact with the personnel running the facilities. This ensures that interrogators understand why a prisoner is in custody and what intelligence value he may have. It also allows the Judge Advocate or host nation courts a means of requesting additional information or assistance from the capturing unit.

Inform and Educate Detainees. As detailed above, insurgents will often use holding facilities to spread their ideology and recruit new members. Rather than ceding the information battle in the holding facility to the insurgents, counterinsurgents can take steps to oppose the insurgent message. Informing prisoners as to the policies and principles of the government may undermine the belief of some insurgents in their cause. In addition, job training, literacy programs, and other education provide a means of constructively filling the time that insurgents spend in prison. Education may undermine

insurgent ideology and provide detainees with job skills they can use at the end of the conflict.

Manage Perception. If arrests and internment aid insurgent propaganda and recruiting, they are a liability to the counterinsurgency effort. Accounting for the above considerations will help ensure that this does not happen. Planning and conducting arrests and internment must be continuously revaluated to ensure desired effects on the battlefield. Counterinsurgents should ensure that arrest and internment synchronize with information operations. As long as perceptions remain neutral to positive, arrests and internment can help end the insurgency rather than perpetuate it.

The United States will continue to be involved in counterinsurgency efforts for the foreseeable future. Over the last 5 years, America has made many mistakes common to counterinsurgency. By recognizing these mistakes and learning from them, better policies and practices can be adopted, which will make the United States more effective in countering insurgencies and will ultimately save American lives. **JFQ**

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- ²⁸ See Grossman. In the article, an officer is quoted as saying, "Why is it the top 10 people I'm going after have all been to Abu Ghraib?"
- ²⁹ Galula, *Pacification in Algeria*, 1956–1958, 314–316.
 - ³⁰ Galula, Counterinsurgency Warfare, 124.
- ³¹ Kurt M. Campbell and Richard Weiss, *Non-Military Strategies for Countering Islamist Terrorism: Lessons Learned from Past Counterinsurgencies*, The Princeton Project on National Security (Princeton: The Woodrow Wilson School of Public and International Affairs, 2006), 21–22, available at <www.hudson.org/files/publications/Counterinsurgency-Princeton-Campell-Weitz.pdf>.

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